HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 25212 of 2006

10.12.2007

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Between:

Damera Gopala Rao & others

… Petitioners

AND

Government of Andhra Pradesh,
Rep. by its Secretary, Municipal Administration
And Urban Development (J1), Hyderabad
& others

… Respondents

Counsel for the petitioners : Sri T.S. Anand

Counsel for respondent Nos.1,2 & 4 : Sri S. Nageswara Reddy
Counsel for respondent No.3 : Assistant Government Pleader for Municipal Administration

O R D E R:

This writ petition is filed for a writ of certiorari to quash G.O.Ms.No. 568, M.A. dated 06.11.2006 issued by respondent No.1 insofar as it stipulated payment of Rs.1,875/- per square yard towards conversion charges. The petitioners also sought for a consequential direction to the respondents to covert the plots given to them from leasehold to freehold without insisting on any charges.

The petitioners were allotted house sites in T.S.Nos. 2258 and 2256/2B in 3rd ward (previously T.S.No.18/1 2nd ward) of Kakinada Municipality on leasehold basis for 99 years under the rules framed by

respondent No.1 and notified in G.O.Ms.No. 154 dated 05.12.1969. In pursuance of order dated 01.08.1978 passed by Commissioner and Special Officer of the erstwhile Kakinada Municipality, the petitioners remitted the requisite amounts as worked out under the aforementioned rules. In the months of June and July 1979, respondent No.4 registered house site plots on leasehold basis for 99 years.

It appears certain representations were made on behalf of the allottees that Rule 24 of the Rules notified in G.O.Ms.No. 154 dated 05.12.1969 envisages conversion of leasehold rights into freehold rights after the expiry of 99 years and that by that time, none of the allottees will survive, respondent No.1 issued G.O.Ms.No. 568 dated 06.11.2006 providing for conversion of leasehold rights into freehold rights subject to the terms contained in paragraph 4 of the said G.O. The present writ petition is filed questioning para 4(ii) of the G.O. under which the allottee is liable to pay Rs.1,875 per square yard towards transfer/conversion charges in respect of the residential plots.

Sri T.S. Anand, learned counsel for the petitioners submitted that the condition stipulated in the impugned G.O. is highly arbitrary. According to him, in the year 1994, respondent No.1 issued G.O.Ms.No. 816 dated 09.08.1994 under which conversion charges were fixed in respect of the plots allotted in Secunderabad area and a comparison of the conversion charges prescribed therein with the conversion charges contained in the impugned clause shows that the charges prescribed for the petitioners are very steep and unreasonable. The learned counsel further contended that the allottees have already paid the premium comprising the estimated cost of development of the plot, the estimated interest charges and costs of acquisition as envisaged in Rule 15 of the G.O.Ms.No. 154 dated

15.12.1969 and that there is no justification for the respondents to collect a part of the market cost existing as on today.

Learned Assistant Government Pleader for Municipal Administration and Sri S.Nageswara Reddy, learned Standing Counsel appearing for respondent Nos. 1 and 2 and 4 respectively submitted that the condition contained in G.O.Ms.No. 568 dated 06.11.2006 is purely optional and that if the petitioners are not willing to avail the option, they are free to continue with the present arrangement under G.O.Ms.No. 154 dated 05.12.1969. The learned counsel submitted that since the impugned G.O. envisages conversion of leasehold rights into freehold rights, the amounts representing 50% of the present basic value prevailing in the area are adopted as consideration for such conversion.

I have carefully considered the respective submissions of the learned counsel.

A perusal of G.O.Ms.No. 568 dated 06.11.2006 shows that keeping in view the representation of the Land Acquisition and Development Scheme Development Plot Owners' Welfare Association that they are not in a position to construct the houses without getting loan assistance from banks, Life Insurance Corporations and other financial institutions without conversion of the nature of the holding of the allottees and the fact that by the time of expiry of 99 years, neither the original allottees will survive and even the survival of their legal heirs may be doubtful, respondent No.1 issued the said G.O. Para 4 of the said G.O. reads as under:

"4. Accordingly, in exercise of the provisions contained under Rules 26 to 28 and in relaxation of Rule 5(a) of G.O.Ms.No. 154 Housing, Health, Housing and Municipal Administration Department, dated 05.12.1969, Government hereby approve the following scheme for transfer of plots developed under Land Acquisition and Development (LAD) Scheme from

sale on lease hold basis to freehold to original applicants/allottees in Kakinada Municipal Corporation:

i) The scheme shall be optional and valid for one year from the date of issue of this order.

ii) The transfer/conversion charges in respect of the residential plots shall be at Rs.1,875/- per sq. yard (Rupees one thousand eight hundred and seventy five only) i.e. 50% of the present basic value of Rs. 3750/-.

iii) The transfer/conversion charges in respect of the plots which were converted into commercial purpose in violation of the lease conditions, shall be at Rs.4,500/- per sq. yard (Rupees four thousand five hundred only) i.e. 100% of the present basic value of Rs.4500/-.

iv) While transferring/converting the plots from sale on lease hold basis to free hold the registration charges shall be borne by the allottee, based on the rates being charged for such transfer/conversion.

v) The allottee who has completed 25 years period of possession of the plot and fulfilled all other terms and conditions as stipulated in G.O.Ms. No. 154 Housing, Health, Housing and Municipal Administration Department, dated 05.12.1969, is eligible for submission of application for transfer/conversion after clearing all dues/arrears if any due on the plot to the Municipal Corporation."

It is clear from the above reproduced portion of the G.O. that the scheme is optional and valid for one year. If the petitioners were not willing to avail the benefit of G.O.Ms.No. 568, there is no compulsion on them to accept the conditions contained therein and they are free to continue with the present arrangement of holding the plots on leasehold basis. I am, therefore, of the view that the petitioners cannot challenge the conditions contained in G.O.Ms.No. 586 as arbitrary.

The contention of the learned counsel for the petitioners that since the allottees have already paid the amounts as required under G.O.Ms.No. 154, they are not liable to pay the amounts under the impugned G.O. does not merit consideration. The terms of G.O.Ms.No.

154 dated 05.12.1969 are framed having regard to the nature of rights being conferred on the allottees namely; leasehold rights. As respondent No.1 envisaged conversion of the said rights into one of freehold rights, the terms of two G.Os. cannot be compared with each other. Since the allottees on complying with the conditions contained in G.O.Ms.No. 586 will become absolute owners of the property, it cannot be said that the ownership should be conferred on them on the same terms and conditions on which leasehold rights were conferred.

As regards the contention of the learned counsel for the petitioners that in the year 1994, the Government prescribed lower conversion rates in respect of the allottees of sites situated in Secunderabad area and that the guidelines contained in the approved rules ought to have been followed by the respondents, I have not felt impressed to accept the same. Undisputedly, 13 years have passed from the time when the guidelines were issued in terms of G.O.Ms.No.816 dated 09.08.1994 and the value of the land has increased by metes and bounds since then. Therefore, the said G.O. cannot be taken as the basis for conferring the ownership rights on the petitioners.

On a holistic consideration of the entire case, I am of the view that none of the rights of the petitioners have been infringed, warranting interference by this Court under Article 226 of the Constitution of India.

Learned counsel for the petitioners stated that as one year period provided under the impugned G.O. for payment of the amount has already expired, the Court may direct the respondents to extend the benefit available under the said G.O. to the petitioners. Since the petitioners were prosecuting the case bona fide, I deem it appropriate to direct the respondents to permit them to pay the amount envisaged

in paragraph 4 of G.O.Ms.No.568 dated 06.11.2006 within a period of three months from today and on such payment and complying with the other conditions stipulated in the said G.O., the respondents shall convert the leasehold rights of the petitioners into freehold rights by executing appropriate documents.

Subject to the above observations, the writ petition is dismissed.

C.V.NAGARJUNA REDDY, J

10.12.2007
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